TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1929

No. 452

RICHBOURG MOTOR COMPANY, INTERVENOR, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 21, 1929

CERTIORARI GRANTED DECEMBER 2, 1929

(34,583)

(34,583)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1929

No. 452

RICHBOURG MOTOR COMPANY, INTERVENOR, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

INDEX.

	Original	Print
Record from the district court of the United States, Western North Carolina	1	1
Caption (omitted in printing)	1	
Libel	1	1
Answer	3	2
Minute entries of trial	5	4
Agreed statement of evidence and facts, etc	6	5
Judgment	10	8
Assignments of error	11	10
Memorandum re appeal papers	14	12
Stipulation re transcript of record, etc	14	12
Clerk's certificate (omitted in printing)	16	
Proceedings in United States circuit court of appeals, fourth circuit	17	14
Minute entries	17	14
Opinion per curiam	18	15
Judgment	20	16
Minute entries re mandate and appeal	21	17
Clerk's certificate (omitted in printing)	21	
Order allowing certiorari	22	17

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 16, 1929

[fols. a-1] [Caption omitted]

IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF NORTH CAROLINA, AT ASHEVILLE

District Court No., 718

UNITED STATES OF AMERICA, Libelant,

v.

ONE FORD COUPE, Motor #14,444,150, License #325,980

LIBEL—Filed Mar. 3, 1927

To the Honorable E. Y. Webb, Judge of said Court:

The libel of the United States of America, a corporation sovereign, by Frank A. Linney, its attorney in and for the [fol. 2] Western District of North Carolina, respectively represents:

That on the 22 day of February, 1927, the Federal Prohibition Administrator for the Eighth Prohibition Division which includes the State of North Carolina seized from the possession of Ruth Bryson, H. C. Collins, and Jessie Neal, at Asheville, N. C., in Henderson County, in the district aforesaid, one Ford Coupe Automobile, Motor #14,444,150, and 12 1/8 gallons of illicit whiskey contained in—, which said whiskey was destroyed; and the said Federal Prohibition Administrator now holds the said automobile in the Garage of the Davis Motor Co., Hendersonville, N. C., *North Carolina*, within the jurisdiction of this Honorable Court, subject to forfeiture to the United States for causes propounded as follows:

That on the 22 day of February A. D., 1927, in the Western District of North Carolina, Ruth Bryson, H. C. Collins and Jessie Neal, without having paid the tax thereon and with intent to defraud the United States thereof, did use the said Ford Coupe Automobile in the removal and for the deposit and concealment of goods and commodities, to-wit, 12⅛ gallons of illicit whiskey, contained in —, for and in respect whereof a tax is imposed, and had become due and payable under Section 600 of the Revenue Act of 1921 (42 Statutes at large 285), contrary to the form of the Statute in such case made and provided, and against the peace and

dignity of the United States, and particularly contrary to Section 3450 of the Revised Statutes of the United States.

The Attorney for the United States saith that all and singular the premises are true and within the jurisdiction of this Honorable Court, and by reason thereof, and by force of the statute in such case made and provided, the above named automobile became and is subject to forfeiture.

Wherefore, your libelant prays that due process issue in that behalf, as well as of attachment, to bring the above named automobile within the custody of the Court as of monition to all parties in interest to appear on the return day of such process, and duly intervene herein by claim and plea in the premises, and due process being had thereon, that for the causes aforesaid, the above named automobile be condemned by decree of forfeiture, and the proceeds [fol. 3] thereof be distributed according to the law, or such other disposition be had thereof as the Court shall direct.

F. A. Linney, Attorney for the United States for the Western District of North Carolina.

IN UNITED STATES DISTRICT COURT

ANSWER OF RICHBOURG MOTOR CO.—Filed Apr. 2, 1927

Richbourg Motor Company, a corporation organized and existing under and by virtue of the laws of the State of North Carolina, intervening in the above-entitled matter and answering the libel filed herein, says:

1

That on January 21st, 1927, Richbourg Motor Company sold one Ford Coupe, Motor No. 14444150, to Mrs. Mary Honeycutt, and at the time of said sale said Mary Honeycutt executed a conditional sale agreement securing the sum of Four Hundred and Seventeen Dollars ($417.00), as the balance of the purchasing price on said car, a copy of which said conditional sale agreement is hereto attached and marked "Exhibit A," and that said conditional sale agreement was duly recorded in the Office of the Register of Deeds for Buncombe County, on the 27th day of January,

1927, in Book of Chattel Mortgages No. 109, at Page 73, and that all of the indebtedness secured by said conditional sale agreement, together with interest on any notes which have matured, remains unpaid.

2

That the Richbourg Motor Company has sold the said Mrs. Mary Honeycutt a Ford Automobile previous to this time and taken a conditional sale agreement on said automobile, and that said Mrs. Mary Honeycutt had paid for said car in full, and that Richbourg Motor Company be- [fol. 4] lieved that she would pay for this automobile in full.

3

That the said Richbourg Motor Company, prior to making said sale to Mrs. Mary Honeycutt, made an investigation of her reputation and credit among people who were in a position to know her character and standing, and at the same time secured a statement from the said Mary Honeycutt, a copy of which is attached to the conditional sale agreement hereinbefore mentioned, and that acquaintances of said Mary Honeycutt informed the Richbourg Motor Company that she was a woman of good standing in the community and was reliable; that she gave her age as fifty-six years and her profession as a nurse, and Richbourg Motor Company believed, and had every reason to believe, that she was a woman of good standing and thoroughly reliable; that shortly after this car was seized, Richbourg Motor Company had a conference with Mrs. Mary Honeycutt, and she made an affidavit to the effect that she had let her relative, a young man, have her car to go to Asheville and that the next she heard of the car, it was captured near Hendersonville with whiskey in it and with the same young man in the car. She further stated that she was ignorant of any intention on the part of the young man to haul whiskey, and that if she had known of any such intentions on his part, or had reason to believe that he had any such intentions, she would not have let him have the car under any circumstances. This affidavit was sent by Richbourg Motor Company to Mr. Kenneth J. Kindley, Assistant United States District Attorney, at Charlotte.

4

Richbourg Motor Company further states that it takes extra caution in regard to selling cars to anyone, and will not sell a car to any person who does not furnish Richbourg Motor Company with good references, which Richbourg Motor Company investigates, and Richbourg Motor Company had never heard of Mrs. Mary Honeycutt having anything to do with whiskey, in any manner whatsoever.

[fol. 5] 5

Richbourg Motor Company further states that it is of the opinion that the car herein mentioned now is not worth the amount of the indebtedness secured by the said conditional sale agreement.

Wherefore Richbourg Motor Company prays that said automobile may be turned over to it for sale under its conditional sale agreement, and for such other relief as to the Court may seem proper.

R. R. Williams, Attorney for Richbourg Motor Company.

Duly sworn to by H. G. Reagan. Jurat omitted in printing.

IN UNITED STATES DISTRICT COURT

MINUTES OF TRIAL

At the May-adjourned Term of the District Court of the United States for the Western District of North Carolina, begun and holden in the City of Asheville, in said District, on the 16th day of July, 1928; among others, the following proceedings were had:

[fol. 6] [Title omitted]

The case was called and both plaintiff and defendant announce their readiness for trial, whereupon the issues were joined and the following jurors were duly sworn and impanelled to-wit: R. W. Beachboard, S. E. Draper, P. N.

Price, C. G. Mears, A. N. Pool, F. C. McCracken, Tom Lanning, S. E. Johnson, Glen A. Boyd, J. M. Roberts, Joe Phipps and W. E. Anderson.

Two United States witnesses were duly sworn and examined.

Counsel for both plaintiff and defendant address the Court and jury.

The Court then charged the jury, and they responded to the issues as follows:

1. Was the Ford Coupe Motor Number 1-444150 engaged in removing and concealing untax paid liquor as alleged in the libel?

Answer. 'Yes.'

IN UNITED STATES DISTRICT COURT

AGREED STATEMENT OF EVIDENCE AND FACTS, MOTIONS OF COUNSEL, AND RULINGS OF THE COURT, WHICH OCCURRED AT THE TRIAL—Filed Oct. 2, 1928

Mr. W. W. OWENS, a National Prohibition Officer, testified as follows:

On or about the 22nd day of February, 1927, I seized Ford Coupe No. 14,444,150 from Ruth Bryson, H. C. Collins and Jesse Neal. It had twelve gallons and a pint of corn [fol. 7] whiskey in it, which was in half gallon fruit jars. The twelve gallons were in twenty-four containers, and in two cases in the back of the car, twelve containers being in each case. The pint was in Mrs. Bryson's lap in the front of the car. It was new liquor and was concealed in the back of the car. The car was in motion when I first saw it. I saw them come down the highway, and as they came back I got them. They were gone about an hour. I took charge of the car and made a report to my superior officer. There was nothing about the liquor to indicate that any tax had been paid on it. There were no government stamps on it. The lid on the back of the coupe was down and the door was locked. It was what is known as moonshine liquor, and smelled like whiskey we often capture in this section. I knew Mrs. Bryson, the girl in the car, and

was suspicious of the car. I saw it going down the road and watched for it as it came back. Then I saw it coming back up the road and stopped the car on the main highway and made an investigation and found this liquor in the car. At that time there were three persons in the car, and I arrested all three of those persons and took them before the Commissioner for committal to the Federal Court, and at the same time I seized the automobile and took charge of it. I knew Ruth Bryson, who was the only woman in the car. The whiskey was locked in the back of the car. A charge of transporting whiskey in violation of the Prohibition Act was brought against the occupants of the car before the Commissioner, and when the case came to the Federal Court the occupants were indicted under Section 3296.

It is agreed that the occupants of the car were arrested by Mr. Owens; that warrant was issued against them charging them with transportation and possessing whiskey in violation of the National Prohibition Act; that thereafter when the case was reported to the United States Attorney he caused a bill of indictment to be sent to the Grand Jury charging a violation under Section 3296 of the Revised Statutes; that is, removing and concealing.

It is agreed that the Richbourg Motor Company had made a careful investigation as to Mrs. Mary Hunnicutt on two occasions; that Mrs. Mary Hunnicutt had purchased a [fol. 8] Ford automobile from Richbourg Motor Company previously to the time she purchased the automobile in question; that at the time of the purchase of the first automobile, Richbourg Motor Company required her to give references as to persons who knew her and knew her general character; that Richbourg Motor Company interviewed those persons to whom Mrs. Mary Hunnicutt referred them and ascertained from those references that Mrs. Mary Hunnicutt was a reliable and law-abiding woman, and that there was no information or suspicion that she was engaged in the violation of any law or had ever engaged in the liquor business in any way; that at the time of the purchase of the automobile involved in this action, Richbourg Motor Company made another investi-

gation and required references from Mrs. Mary Hunnicutt as to persons who knew her and knew her general character, and ascertained from this second investigation that Mrs. Mary Hunnicutt was a law-abiding woman and was not suspected of violating any of the liquor laws in any way; that the Richbourg Motor Company refuses to sell automobiles to any person who has ever violated any of the liquor laws of the country or who is under any suspicion of violating any of the prohibition laws of the country.

It is admitted that Richbourg Motor Company sold this car to Mary Hunnicutt and has a conditional sales contract, and that there is no collusion and that it is a bona fide holder.

It is agreed that at the time of the seizure of said automobile there was on record in the office of the Register of Deeds of Buncombe County, State of North Carolina, in Book of Chattel Mortgages No. 109, Page 73, a conditional sales agreement, copy of which is attached to the answer of the intervenor filed in this case, and that the amount of the indebtedness of the said Richbourg Motor Company secured by said chattel mortgage on said Ford coupe amounted, at the time of the seizure, to $417.00, balance of the purchase price on said car, which mortgage was taken at the time of the purchase of said car in good faith by the Richbourg Motor Company.

At the close of all the evidence, the intervenor, Richbourg Motor Company, moved to dismiss the libel on the ground, among others, that the United States had elected to proceed [fol. 9] under the National Prohibition Act and was barred from proceeding under Section 3450, and on the ground that the prohibition officer discovered persons engaged in the act of transportation of intoxicating liquors and it was mandatory to proceed under the National Prohibition Act. Motion overruled and Richbourg Motor Company excepts.

The intervenor, Richbourg Motor Company tenders the following issue: Was the Ford coupe, Motor No. 14,444,150, actually engaged in transporting liquor and were persons in the car and arrested at the time of the seizure of said car?

The Court declines to submit the issue submitted by the intervenor, Richbourg Motor Company, because the issue

is not raised by the pleadings in the case for the determination of the law question involved.

Intervenor, Richbourg Motor Company, excepts.

The Court: There is one issue: "Was the car, Ford Coupe No. 14,444,150, engaged in removing and selling untax paid *lingor*, as alleged in the libed of plaintiff"? You have heard the testimony about it. If you find it was, you will answer the issue "Yes"; if you find it was not, you will answed the issue "No."

It is agreed that the foregoing is a true and correct statement of the evidence and facts, motions of counsel, and rulings of the Court at the trial of the above entitled matter.

Thos. J. Harkins, United States District Attorney and Attorney of Record for the United States of America, Appellee. Chas. G. Lee, Jr., R. R. Williams, Attorneys for Richbourg Motor Company, Appellant.

The foregoing Agreed Statement of Facts and Evidence, Motions of Counsel, and Rulings of the Court at the Trial are approved by me.

E. Y. Webb, United States District Judge

[fol. 10] IN UNITED STATES DISTRICT COURT

At Law. No. 718

UNITED STATES OF AMERICA, Libelant,

v.

ONE FORD COUPE, Motor No. 14,444,150, License No. 325,980

JUDGMENT—Filed Sept. 21, 1928

This cause coming on for hearing and being heard before Hon. E. Y. Webb, United States District Judge for the Western District of North Carolina and a jury;

And it appearing to the Court that, on the 22nd day of February, 1927, Federal Officers captured one Ford Coupe automobile, Motor No. 14,444,150, from Ruth Bryson, H. C.

Collins, and Jessie Neal, and twelve and one-eighth (12 1/8) gallons of untaxpaid liquor;

And it further appearing to the Court that, on the 3rd day of March, 1927, a libel was filed against the said Ford Coupe automobile, by the United States Attorney for the Western District of North Carolina, for violation of Section 3450 R. S., removing and concealing twelve and one-eighth gallons of untaxpaid liquor;

And it further appearing to the Court that the Richbourg Motor Company intervened and answered said libel by the United States of America and set out the fact that they, the Richbourg Motor Company, held a chattel mortgage, duly registered in the office of the Register of Deeds, for the County of Buncombe, State of North Carolina;

And it further appearing to the Court that on the 19th day of May 1927, the Richbourg Motor Company placed in the hands of the United States Clerk a good and sufficient bond for $350.00, signed by Richbourg Motor Company, by J. A. Richbourt, President, and E. L. Sams as surety on said bond, said bond being for the purpose of releasing said automobile;

And it further appearing to the Court that an order of [fol. 11] restitution was issued by the United States Clerk for the Western District of North Carolina and the said automobile was delivered to the intervenor, Richbourg Motor Company;

And it further appearing to the Court that the condition set out in the bond was that the said automobile should be delivered to the said Richbourg Motor Company, and if judgment passes against said Richbourg Motor Company, claimant, as to the whole or any part of said automobile the said claimant would pay into the Court the amount of the bond, the appraised value of the automobile, $350.00;

And it further appearing to the Court on the 17th day of July, 1928 this cause came on for hearing before Hon. E. Y. Webb, United States District Judge for the Western District of North Carolina, and a jury; and that after the evidence was submitted by both the plaintiff, the United States of America, and the intervenor, the Richbourg Motor Company, one issue was submitted to the jury, to-wit: was the Ford Coupe Motor No. 14,444,150 engaged in the remov-

ing and concealing of untaxpaid liquor as alleged in the libel; and this issue was answered "yes";

It is now therefore, ordered and adjudged that the bond for $350.00 signed by Richbourg Motor Company by J. A. Richbourg, President as principal, and E. L. Sams as surety, be forfeited in the full amount to the United States Government, with the costs to be taxed by the Clerk, and interest from the 19th day of May, 1927.

This the 17th day of July, 1928.

E. Y. Webb, United States Judge.

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed Sept. 29, 1928

Now comes Richbourg Motor Company, intervenor and appellant in the above entitled cause, and files the following assignment of errors, upon which it will rely upon its prose-
[fol. 12] cution of the appeal in the above entitled cause from the decree made by this Honorable Court on the 19th day of July, A. D., 1908:

1

That the United States District Court, for the Western District of North Carolina, erred in overruling the motion of the intervenor and appellant to dismiss the libel for the following reasons and errors, which are assigned as errors on appeal:

(1) It appears from the uncontradicted evidence that three persons were discovered actually engaged in transporting intoxicating liquors, by a National Prohibition Officer, and that the persons so engaged in transportation were arrested and the car seized by said Prohibition Officer, making it mandatory to proceed under the National Prohibition Act.

(2) That the persons arrested for transporting intoxicating liquor in the car which was seized were charged before the United States Commissioner of violating the Prohibition Act, and this act on the part of the Government constituted an election to proceed under the National Prohibition Act, and the United States was barred from proceeding under Section 3450.

2

That the United States District Court, for the Western District of North Carolina, erred in declining to submit the following issue tendered by the intervenor and appellants:

"Was the Ford Coupe, Motor No. 14,444,150, actually engaged in transporting liquor and were persons in the car and arrested at the time of the seizure of said car?"

3

That the United States District Court, for the Western District of North Carolina, erred in submitting the following issue to the jury:

[fol. 13] "Was Ford Coupt No. 14,444,150 engaged in removing and selling untax-paid liquor as alleged in the libel of the plaintiff?"

4

That the United States District Court, for the Western District of North Carolina, erred in signing and entering the decree set forth in the record, for the following reasons:

(1) It appears from the uncontradicted evidence that three persons were discovered actually engaged in transporting intoxicating liquors, by a National Prohibition Officer, and that the persons so engaged in transportation were arrested and the car seized by said Prohibition Officer, making it mandatory to proceed under the National Prohibition Act.

(2) That the persons arrested for transporting intoxicating liquor in the car which was seized were charged before the United States Commissioner of violating the Prohibition Act, and this act on the part of the Government constituted an election to proceed under the National Prohibition Act, and the United States was barred from proceeding under Section 3450.

(3) That Richbourg Motor Company, intervenor, made a diligent investigation of Mrs. Mary Honeycutt, to whom the car was sold, and found her to be a woman of good character; and that there was no collusion between Richbourg Motor Company and Mary Honeycutt, and that the Richbourg Motor Company is a bona fide holder of a conditional

sales contract retaining title to the Ford Coupe involved in this suit, which agreement was duly recorded in the proper office prior to the seizure of said automobile.

Wherefore the appellant prays that said decree be reversed, and that the said libel be dismissed, and for such other and further orders as may be proper in the premises.

Chas. G. Lee, Jr., R. R. Williams, Counsel for Intervenor, Appellant.

[fol. 14] In United States District Court

Memorandum Provided by Section Seven of Rule 14

Petition for appeal dated Sept. 18, 1928.
Order allowing appeal filed Sept. 29, 1928.
Notice of appeal dated September 18, 1928.
Acceptance and waiver of service dated Sept. 22, 1928.
Appeal bond dated Sept. 18, 1928, penalty $600.00, obligors—Richbourg Motor Company, Principal, and J. A. Richbourg and U. G. Speed, Sureties.
Conditioned to pay damages and costs.
Citation dated September 20th, 1928.

In United States District Court

Stipulation re Transcript of Record, etc.—Filed Sept 29, 1928

It is hereby stipulated and agreed between counsel for Richbourg Motor Company, appellant, and United States of America, appellee, that the notice of appeal, assignment of errors and petition for appeal were all dated on the 18th day of September, A. D., 1928; that service of the notice of appeal was accepted by the appellee on the said 18th day of September, 1928, and that the said petition was granted and appeal allowed and citation issued on the 20th day of September, 1928, and that service of said citation was accepted on the 22nd day of September, A. D., 1928, and that the said notice of appeal, assignment of errors, petition for

appeal, and citation, and all other papers, were filed in the office of the Clerk of the District Court of the United States, for the Western District of North Carolina, on the 28th day of September, A. D., 1928, and that on said date the appellant filed a justified bond, in the sum of Six Hundred Dol-
[fol. 15] lars ($600.00), to act as a supersedeas bond and also as a bond for costs and damages on appeal, in the form and for the amount fixed by the Judge and approved according to law.

It is further stipulated and agreed that the record in this case shall consist of the following:

(1) Libel.

(2) Answer of Richbourg Motor Company as Intervenor.

(3) Minute entries empanelling jury.

(4) Agreed statement of evidence and facts, motions of counsel, and rulings of the Court which occurred at the trial.

(5) Verdict.

(6) Judgment.

(7) Assignment of errors.

(8) Memorandum, notice of appeal, petition, writ of error, bond, and citation.

(9) This stipulation.

(10) Clerk's order to transmit record.

(11) Clerk's certificate.

It is further stipulated and agreed between the parties hereto that the Clerk of this Court shall make up transcript of the record in the above styled case and transmit the same to the United States Circuit Court of Appeals, for
[fol. 16] the Fourth Circuit, at Richmond, Virginia, and that it shall be printed under the supervision of the Clerk of that Court, in accordance with Rule 23.

Thos. J. Harkins, United States District Attorney and Attorney of Record for the United States of America, Appellee. Chas. G. Lee, Jr., R. R. Williams, Attorneys for Richbourg Motor Company, Appellant.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 17] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 2808

RICHBOURG MOTOR COMPANY, Intervenor, Appellant,

versus

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for the Western District of North Carolina, at Asheville.

MINUTE ENTRIES

October 12, 1928, the transcript of record is filed and the cause docketed.

Same day, the original notice of appeal, petition for appeal, order allowing appeal, bond, and citation are certified up under Sec. 7 of Rule 14.

Same day, the appearance of R. R. Williams and Charles G. Lee, Jr., is entered for the appellant.

October 15, 1928, the appearance of Thos. J. Harkins, U. S. Attorney, is entered for the appellee.

November 2, 1928, twenty-five copies of the printed record are filed.

January 12, 1929, stipulation of counsel to continue cause to the June term, 1929, is filed.

Same day, to-wit, January 12, 1929, cause continued in Open Court to June term, 1929, per stipulation of counsel.

[fol. 18] ARGUMENT OF CAUSE

July 5, 1929 (June term, 1929), cause came on to be heard before Parker and Northcott, Circuit Judges, and Soper, District Judge, and is submitted on the briefs.

In United States Circuit Court of Appeals, Fourth Circuit

No. 2808

Richbourg Motor Company, Intervenor, Appellant

versus

United States of America, Appellee

Appeal from the District Court of the United States for the Western District of North Carolina, at Asheville

(Submitted on Briefs July 5, 1929. Decided July 22, 1929)

Before Parker and Northcott, Circuit Judges, and Soper, District Judge

Opinion—Filed July 22, 1929

[fol. 19] Per Curiam:

This is a proceeding for the forfeiture of an automobile under Section 3450 of the Revised Statutes. On February 22, 1927, the automobile in question was being operated by a Mrs. Bryson who, with two companions, was driving therein. A prohibition enforcement officer stopped them and, upon searching the car, found more than twelve gallons of whiskey. He thereupon took the car into his possession and arrested the occupants, who were bound over to court by a United States Commissioner on a charge of violating the National Prohibition Act. The United States Attorney, however, did not proceed under the National Prohibition Act, but sent a bill of indictment against the occupants of the car under Section 3296 of the Revised Statutes and filed a libel against the car itself under Section 3450. An intervening petition claiming the car was filed by the Richbourg Motor Company, the innocent holder of an unsatisfied purchase money lien thereon, but the District Judge ordered it forfeited and the motor company has appealed.

We think that the decree of forfeiture was clearly correct. U. S. v. One Ford Coupe, 272 U. S. 321, 331; U. S. v. Commercial Credit Company (C. C. A. 4th), 20 Fed. (2d) 519; General Motors Acceptance Corporation v. U. S. (C. C. A. 4th), 23 Fed. (2d) 799. The case at bar differs from the cases of Port Gardner Investment Co. v. U. S., 272 U. S.

564, and Commercial Credit Co. v. U. S., 276 U. S. 226, in that in those cases the persons in the automobiles which were proceeded against were prosecuted and convicted under the National Prohibition Act; and it was held that this precluded the government from resorting to proceedings under Section 3450 against the automobiles. Here the United States Attorney has elected to proceed against the occupants of the car as well as against the car itself under the revenue statutes. The case differs from that of Commercial Credit Corporation v. U. S., 18 Fed. (2d) 927, a decision of the Circuit Court of Appeals of the Second Circuit, in that there the United States Attorney had elected to proceed against the occupants of the car under the National Prohibition Act by filing an information against them charging violation of that act. Without passing upon the question involved in that case, we are satisfied that in [fol. 20] a case such as this, where there has been no election to prosecute the guilty parties under the National Prohibition Act, the government may proceed under Section 3450 of the Revised Statutes, and that against such proceeding the rights of an innocent lien claimant will not avail. We have discusssed this matter at length in U. S. v. Commercial Credit Co., supera, 20 Fed. (2d) 519, and we need not repeat what we said there. The decree of the District Court will accordingly be affirmed.

Affirmed.

In United States Circuit Court of Appeals, Fourth Circuit

No. 2808

Richbourg Motor Company, Intervenor, Appellant,

vs.

United States of America, Appellee

Appeal from the District Court of the United States for the Western District of North Carolina

Judgment—Filed and Entered July 22, 1929

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of North Carolina, and was argued by counsel.

[fol. 21] On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed.

July 22, 1929.

John J. Parker, U. S. Circuit Judge

IN UNITED STATES CIRCUIT COURT OF APPEAL

MINUTE ENTRIES RE MANDATE AND APPEAL

On another day, to-wit, August 22, 1929, the mandate of this Court in this cause is issued and transmitted to the United States District Court at Asheville, North Carolina, in due form.

Same day, the original notice of appeal, petition for appeal, order allowing appeal, and bond are returned to the Clerk of the District Court, at Asheville, North Carolina.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 22] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed December 2, 1929

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fourth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 34,583. U. S. Circuit Court of Appeals, Fourth Circuit. Term No. 452. Richbourg Motor Company, intervenor, petitioner, vs. The United States of America. Petitioner for writ of certiorari and exhibit thereto. Filed October 21, 1929. Filed No. 34,583.